

MONTANA LEGISLATIVE HISTORY

Chapter 278 1987

Bill H 240 S _____ Original bill & history ✓c

H. Committee on Judiciary

Hearing Date(s) Jan 27 ✓c

Feb 19 ✓c

_____ c

_____ c

Date Out Feb 19 ✓c

S. Committee on Business & Industry

Hearing Date(s) Mar 09 ✓c

Mar 10 ✓c

Mar 11 ✓c

Mar 12 ✓c

Mar 12 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HOUSE BILL NO. 240
INTRODUCED BY THOMAS

IN THE HOUSE

JANUARY 16, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
JANUARY 23, 1987	ON MOTION, REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 21, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1987	PRINTING REPORT.
FEBRUARY 24, 1987	SECOND READING, DO PASS. ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY. THIRD READING, PASSED. AYES, 75; NOES, 25. TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 18, 1987	SECOND READING, CONCURRED IN.
MARCH 20, 1987	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0. RETURNED TO HOUSE.

IN THE HOUSE

MARCH 21, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 House BILL NO. 240
2 INTRODUCED BY Therese
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
5 SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM
6 SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED
7 FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTIONS
8 33-1-317, 33-18-201, AND 33-18-241, MCA; AND PROVIDING AN
9 APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 33-1-317, MCA, is amended to read:

13 "33-1-317. Penalty imposed by commissioner. The
14 commissioner may, after having conducted a hearing pursuant
15 to 33-1-701, impose a fine not to exceed the sum of \$5,000
16 \$25,000 upon a person found to have violated any provision
17 of this code, except 33-30-1012, or regulation duly
18 promulgated by the commissioner, except that the fine
19 imposed upon agents or adjusters shall not exceed \$500. Said
20 fine shall be in addition to all other penalties imposed by
21 the laws of this state and shall be collected by the
22 commissioner in the name of the state of Montana. Imposition
23 of any fine hereunder shall be an order from which an appeal
24 may be taken, pursuant to the provisions of 33-1-711."

25 Section 2. Section 33-18-201, MCA, is amended to read:

1 "33-18-201. Unfair claim settlement practices
2 prohibited. (1) No person may, with such frequency as to
3 indicate a general business practice, do any of the
4 following:

5 {1}{a} misrepresent pertinent facts or insurance
6 policy provisions relating to coverages at issue;

7 {2}{b} fail to acknowledge and act reasonably promptly
8 upon communications with respect to claims arising under
9 insurance policies;

10 {3}{c} fail to adopt and implement reasonable
11 standards for the prompt investigation of claims arising
12 under insurance policies;

13 {4}{d} refuse to pay claims without conducting a
14 reasonable investigation based upon all available
15 information;

16 {5}{e} fail to affirm or deny coverage of claims
17 within a reasonable time after proof of loss statements have
18 been completed;

19 {6}{f} neglect to attempt in good faith to effectuate
20 prompt, fair, and equitable settlements of claims in which
21 liability has become reasonably clear;

22 {7}{g} compel insureds to institute litigation to
23 recover amounts due under an insurance policy by offering
24 substantially less than the amounts ultimately recovered in
25 actions brought by such insureds;

1 ~~(8)~~(h) attempt to settle a claim for less than the
2 amount to which a reasonable man would have believed he was
3 entitled by reference to written or printed advertising
4 material accompanying or made part of an application;

5 ~~(9)~~(i) attempt to settle claims on the basis of an
6 application which was altered without notice to or knowledge
7 or consent of the insured;

8 ~~(10)~~(j) make claims payments to insureds or
9 beneficiaries not accompanied by statements setting forth
10 the coverage under which the payments are being made;

11 ~~(11)~~(k) make known to insureds or claimants a policy
12 of appealing from arbitration awards in favor of insureds or
13 claimants for the purpose of compelling them to accept
14 settlements or compromises less than the amount awarded in
15 arbitration;

16 ~~(12)~~(l) delay the investigation or payment of claims
17 by requiring an insured, claimant, or physician of either to
18 submit a preliminary claim report and then requiring the
19 subsequent submission of formal proof of loss forms, both of
20 which submissions contain substantially the same
21 information;

22 ~~(13)~~(m) fail to promptly settle claims, if liability
23 has become reasonably clear, under one portion of the
24 insurance policy coverage in order to influence settlements
25 under other portions of the insurance policy coverage; or

1 ~~(14)~~(n) fail to promptly provide a reasonable
2 explanation of the basis in the insurance policy in relation
3 to the facts or applicable law for denial of a claim or for
4 the offer of a compromise settlement.

5 (2) As used in this section, liability is reasonably
6 clear when there is no genuine issue as to any material fact
7 regarding liability and the claiming party is entitled to
8 judgment as a matter of law."

9 Section 3. Section 33-18-241, MCA, is amended to read:

10 "33-18-241. Separation of trial of claim for ~~lack--of~~
11 ~~good--faith~~ unfair claim settlement practices from trial of
12 underlying claim -- suspension of proceedings. (1) The trial
13 of a claim or action against an insurer under [section 4]
14 ~~for lack--of-good-faith-in-its-handling-or-settlement-of-an~~
15 ~~insurance-claim~~ unfair claim settlement practices may not be
16 consolidated with a trial of the underlying claim if:

17 ~~(1)~~(a) the ~~lack-of--good--faith~~ insurance settlement
18 claim is against a party different from the party against
19 whom the underlying claim is made; and

20 ~~(2)~~(b) the parties have not stipulated to
21 consolidation of the trial of the ~~lack--of--good-faith~~
22 insurance settlement claim and the underlying claim.

23 (2) In the case of an insurance settlement claim that
24 is subject to the provisions of subsection (1), all
25 proceedings in the case must be suspended until the

1 liability issues of the underlying claim have been
 2 determined either by settlement or by judgment in favor of
 3 the plaintiff."

4 NEW SECTION. Section 4. Independent cause of action
 5 -- burden of proof. (1) An insured or a third-party claimant
 6 has an independent cause of action against an insurer for
 7 actual damages caused by the insurer's violation of
 8 subsection (1)(a), (1)(d), (1)(f), or (1)(m) of 33-18-201.

9 (2) In an action under this section, a plaintiff is
 10 not required to prove that the violations were of such
 11 frequency as to indicate a general business practice.

12 (3) An insured who has suffered damages as a result of
 13 the handling of an insurance claim may bring an action
 14 against the insurer for breach of the insurance contract,
 15 for fraud, or pursuant to this section, but not under any
 16 other theory or cause of action. An insured may not bring an
 17 action for bad faith in connection with the handling of an
 18 insurance claim.

19 (4) In an action under this section, the court or jury
 20 may award such damages as were proximately caused by the
 21 violation of subsection (1)(a), (1)(d), (1)(f), or (1)(m) of
 22 33-18-201.

23 (5) In order to recover under this section, a
 24 plaintiff must prove the absence of any debatable reason for
 25 the insurer's refusal to pay or refusal to pay the amount

1 demanded by the plaintiff. A debatable reason is an arguable
 2 reason that is open to dispute or question.

3 NEW SECTION. Section 5. Codification instruction.
 4 Section 4 is intended to be codified as an integral part of
 5 Title 33, chapter 18, part 2, and the provisions of Title
 6 33, chapter 18, part 2, apply to section 4.

7 NEW SECTION. Section 6. Severability. If a part of
 8 this act is invalid, all valid parts that are severable from
 9 the invalid part remain in effect. If a part of this act is
 10 invalid in one or more of its applications, the part remains
 11 in effect in all valid applications that are severable from
 12 the invalid applications.

13 NEW SECTION. Section 7. Applicability. This act
 14 applies to causes of action arising after the effective date
 15 of this act.

16 NEW SECTION. Section 8. Effective date. This act is
 17 effective on passage and approval.

-End-

Ch. No.	Senate Bill	House Bill	Sponsor	Title
274	277		Hofman	AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ESTABLISHMENT AND OPERATION OF A STATEWIDE POOLING ARRANGEMENT AS A METHOD OF PAYMENT OF PRODUCER MILK PRICES; AMENDING SECTION 81-23-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. Page 528
275	288		McLane	AN ACT CLARIFYING THE APPLICABILITY OF THE TOWN MEETING FORM OF GOVERNMENT; AND AMENDING SECTION 7-3-601, MCA. Page 531
276	382		Jergeson	AN ACT TO EXEMPT FROM SPECIAL ASSESSMENTS CERTAIN PROPERTY OWNED BY A NONPROFIT WATER COMPANY, WATER USERS' ASSOCIATION, IRRIGATION COMPANY, IRRIGATION DISTRICT, CANAL COMPANY, DITCH COMPANY, RESERVOIR COMPANY, OR SIMILAR NON-PROFIT WATER USER ENTITY; AMENDING SECTION 85-7-2011, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE. Page 532
277		188	Bradley	AN ACT REVISING THE LAWS RELATING TO THE ADOPTION OF CHILDREN TO CLARIFY THE PROCEDURE FOR ADOPTION; AND AMENDING SECTIONS 40-8-109 AND 40-8-121 THROUGH 40-8-124, MCA. Page 533
278		240	Thomas	AN ACT PROVIDING A CAUSE OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTION 33-1-317, MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE. Page 537
279		273	Nelson	AN ACT TO ALLOW THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ADOPT RULES FOR THE CALCULATION OF TUITION FOR SPECIAL EDUCATION PUPILS; AND AMENDING SECTIONS 20-5-305 AND 20-5-312, MCA. Page 539
280		370	Asay	AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE OPENCUT MINING ACT; AND AMENDING SECTIONS 82-4-402, 82-4-403, 82-4-423, 82-4-431, 82-4-433, 82-4-434, AND 82-4-441, MCA. Page 541
281		499	Sands	AN ACT PROHIBITING LENDERS FROM USING OR DISCLOSING INFORMATION WITH RESPECT TO A LOAN OR EXTENSION OF CREDIT INVOLVING CREDIT INSURANCE; AND AMENDING SECTION 33-18-501, MCA. Page 548
282		541	C. Smith	AN ACT CLARIFYING THE TERMS OF BOARD OF NURSING MEMBERS; CLARIFYING EDUCATIONAL REQUIREMENTS FOR NURSING SPECIALTY AREAS; CLARIFYING THE BOARD'S AUTHORITY TO DEFINE UNPROFESSIONAL CONDUCT; CLARIFYING THE BOARD'S PROCEDURES FOR DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE; AND AMENDING SECTIONS 2-15-1844, 37-8-202, 37-8-441, AND 37-8-442, MCA. Page 549
283		555	Sands	AN ACT AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO ESTABLISH A PROGRAM FOR IMPAIRED PHYSICIANS; AMENDING SECTION 37-3-203, MCA; AND PROVIDING AN EFFECTIVE DATE. Page 552
284		569	Grady	AN ACT EXPANDING THE APPLICABILITY OF THE RESIDENCY DEFINITION USED IN THE PREFERENCE LAWS CONCERNING AWARDED OF PUBLIC CONTRACTS; AMENDING SECTIONS 18-1-103 AND 18-1-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. Page 553
285		580	Swysgood	AN ACT ALLOWING A FLASHING AMBER LIGHT ON A MAIL DELIVERY VEHICLE. Page 554
286		589	Koehnke	AN ACT TO PROVIDE FOR THE APPOINTMENT OF A CITY COUNCIL BY THE BOARD OF COUNTY COMMISSIONERS IF ALL POSITIONS ON THE COUNCIL BECOME VACANT; AMENDING SECTION 7-4-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. Page 554

CS-32
1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
✓ 240	1/27/87	1/27/87	2/19/87			2/19/87					
241	1/16/87	1/28/87	2/12/87			2/12/87					
256		2/12/87	2/14/87			2/14/87					
262	1/17/87	2/5/87	2/12/87	2/12/87							
267	1/17/87	1/29/87	1/29/87	1/29/87							
268	1/17/87	2/3/87	2/3/87	tabled							
283	1/19/87	1/30/87				2/5/87					
284	1/19/87	1/30/87	2/19/87			2/19/87					
286	1/19/87	2/6/87				2/23/87					
291	1/19/87	1/27/87	Referred to Highways Committee.								
301		2/5/87	failed to meet deadline								
305	1/20/87	2/5/87	2/6/87	2/6/87							
309	1/20/87	1/29/87	2/3/87			2/3/87					
316	1/20/87	1/28/87				2/19/87					

e a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
REPORT TO THE 50TH LEGISLATIVE SESSION

January 27, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 27, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present.

HB # 291 - was transferred from Judiciary Committee to Highways Committee.

HB # 240 - Rep. Fred Thomas, District # 62, sponsor, stated this bill revises the law on insurance bad faith claims. These are claims against insurers arising out of unfair claims settlement practices, which is essentially an administrative remedy that has been on the books for many years. The Supreme Court has expanded the administrative remedy into a court created right of action called the Tort of Insurance Bad Faith. Based on a 1983 case, the court not only allows insurers to sue their own insurer for the Tort of Insurance Bad Faith but also allows an injured third party to sue the wrong doer's insurance company. Montana is one of a handful of liberal right of action states. The right of action has also substantially increased premiums to businesses and individuals across the state. Availability, affordability and fairness are the issues of this bill. Our court has swung the pendulum so far in favor of the trial lawyers that it has stacked the deck against insurers, as a result, all of us pay. This bill swings the pendulum back towards the middle. It limits the action where an insurer should be held accountable for an injury it causes to a person through highly improper conduct. This bill also encourages alternative dispute resolution; this should cut down on court congestion and unnecessary litigation processes. HB #240 moves us toward the original intent of the Unfair Claims Settlement Practices Act but courts will still be able to hear those insurance bad faith actions that in the past have given insurance companies such a black eye.

SUPPORTERS:

JAMES JONES, Attorney, Billings, Representing Montana Association of Defense Counsel stated that in 1983 the traditional system that had existed in Montana for over 100 years and 200 years in the United States was dramatically changed by a controversial and split decision of the Montana Supreme Court, titled Klout vs. Klink. In that case, the court majority said when someone claims to have been injured

in an accident, he gets two suits. One against the other party and a second suit against the other side's insurance company. The result was to set Montana apart from the rest of the nation and identify it as one of the most anti-insured states in the country. We believe it is time to apply some restraint to this new tort created in 1983. HB #240 attempts to do this while keeping the basic claim or suit for deserving cases of misconduct. This bill does this in several steps; 1.) It increases the penalty the insurance company can levy for any violation of any of the 14 provisions of the Unfair Trade Practices Act. 2.) The private cause of action is recognized in the new section four of the bill but it is limited to only four sections. 3.) The bill adopts the Supreme Court 1986 ruling requiring separate trials in the underlining case and then a second trial for violation of the Unfair Trade Practices Act. 4.) Restores some balance, it allows recovery but it limits it.

RANDY GRAY, Attorney, Great Falls, and a lobbyist representing State Farm Insurance Company and National Association of Insurers submitted amendments (Exhibit A) and stated the insurance bad faith climate in Montana, more than any other single cause, has discouraged insurance companies from doing business here for the past four years. Court created action has reduced the predictability in the insurance business in the state. The legislature not the court should decide if this is the recovery system we want for this state. Legislatures should be aware that there is a cost to this system. The cost is paid in terms of higher insurance premiums by everyone and in problems of insurance availability. To open a company up everytime a bad faith claim is made is a bad remedy. The insurance industry believes the Tort Insurance Bad Faith claims should be abolished both on first and third party claims. The industry realizes that the Bad Faith Tort may have become a fixture in our system of laws in Montana. For this reason the insurance industry supports and can live with HB #240 with amendments. This will reduce the shadow affect of bad faith claims and reduces insurance company's losses and thereby hold down the cost of insurance in Montana. It also makes insurance more available. A \$25,000 fine by the commissioner is designed to catch an offending company's attention.

DAVID BRUCK, Helena, former owner of Montana International Insurance, now Vice President and Agency Manager of F.B.S. Insurance International, Helena shows concern with his customers in Montana. He supports Mr. Gray's amendments.

JIM ROBISCHON, Montana Liability Coalition, Helena states the interest of the members of the Liability Coalition and the amendments to the legislation are strictly as a consumer. Members support HB #240 because it preserves a cause of

action in an insurer under the Unfair Claims Settlement Practices Act as pointed out by attorneys here earlier. Members wish to see the cause of action that has been provided to the insured retained in the Montana law and HB #240 does that. This bill also provides a more effective regulatory support in its disposition. This enactment also provides for a clear and well established standard upon which the behavior of the insurance company could be judged or determined, in the event, civil action is prosecuted in lieu of or along with the administrative process before the State Insurance Commissioner.

RALPH YAGGEN, Governor's Council on Economic Development, spoke on behalf of Kay Foster who is Chairwoman of the Insurance Subcommittee of the Governor's Council and stated the council believes the adoption of HB #240 will help to alleviate many of the problem's associated with Insurance Bad Faith in Montana.

ROGER McGLENN, Executive Director of the Independent Insurance Agents Association of Montana stated that the Association, in talking to the companies providing a market for agents to serve their clientele, have told us this is the number one bill effecting availability of insurance in the state of Montana. The Association also favors the amendments presented by Mr. Gray.

KATHY IRIGAN, State Auditor's office and Commissioner of Insurance submitted amendments (Exhibit B) and stated that the first amendment is intended to clarify that subsection (2) of Section 2, Pg. 4, line 5-8 applies only to subsections 1(f) and 1(m) of Section 2. The second amendment is meant to eliminate the increase in the plaintiff's burden of proof reflected in subsection 5 of Section 4 which is on Pg. 5, lines 23-2 on Pg. 6. HB #240 has fiscal impact on the State Auditor's office. This bill encourages insurers third party claimants to bring alleged violations of the Unfair Trade Settlement Practices Statute before the State Auditor rather than before the District Court. The State Auditor generally opposes the amendments proposed by Mr. Gray.

OPPONENTS:

KARL ENGLAND, Montana Trial Lawyers Association explained that the term "Bad Faith" is used loosely to describe a number of different kinds of conduct which our law holds to be wrong or wrong enough to give rise to a law suit. Looking at Pages 2, 3 and 4 of the bill you will see that Montana law currently has a series of prohibitions against an insurance company having a general business practice which includes the things listed on these pages. The key section of the bill is on Page 4, beginning on line 5. This

provides that liability is reasonably clear when there is no genuine issue as to any material fact regarding liability and the claiming party is entitled to judgement as a matter of law. As a matter of law, I am not entitled to a judgement until I have a judgement! He stated that it is clear that this bill eliminates Insurance Bad Faith. It eliminates the one truly proven effective means that all Montanans have to insure that they are treated fairly and honestly by the insurance industry.

MR. HOYT, Attorney, Great Falls, stated that he was going to do his best to attempt to influence the committee because it was time to look at where we are, and where we are going and why we should be going there. The genesis of the purpose of the Unfair Trade Settlement Act started in 1947 in Washington D.C. There was a annual meeting of the National Association of Insurance Commissioners and they recognized the insurance industry had to be regulated in their claim settlement practices. The act was devised by N.A.I. Commissioners. He stated that this act is embodied in the settlement claims manual of every major insurance company that does business in the United States. The insurance companies asked that one thing be put into this act, that being, if they violate the act one time, nothing happens to them. Now, the insurance companies say they do not want that in the act. Mr. Hoyt explained the reason being, it is too easy to prove that certain companies that do in fact violate the act, do it over and over again. A handful of insurance companies try to get away with misuse of the act. Mr. Hoyt said this is not the number one bill, so rather than pass a bill that is this bad, leave it alone or repeal the whole act. We are better off with it repealed than with a bad law. No law is always better than a bad law. He feels this is a bad law.

REPRESENTATIVE WHALEN, District #78, spoke in opposition of HB #240 and submitted an article from In the Nation (Exhibit C). He stated that he feels it is misleading to label all of this legislation that this bill is a part of, as Tort Reform. This is an insurance company bill because it deals with the Unfair Trade Practices Act of the insurance code and it does not report to do anything with claims in any other area except the insurance industry. He feels it is important to understand two points before action is taken on this bill. The first point being, what is the purpose of bad faith causes of action which allow for the imposition of a punitive damage award and the nature of the insurance industry itself. Rep. Whalen stated that there is virtually no regulations of the insurance industry. HB #240 appears to be reasonable on the surface but, if it is passed it will do away with punitive damage claims or bad faith claims against insurance companies. Because the standard of proof

is so unreasonable that it would be virtually impossible for any plaintiff to prove what is required by the bill. The plaintiff has the burden of proving his claim. The direction Montana needs to take is not to further deregulate the insurance industry but to make them comply with notions of fairness and justice.

NO MORE OPPONENTS

QUESTIONS:

REP. RAPP-SVRCEK asked Rep. Thomas how this bill would increase insurance availability to Montana consumers. Rep. Thomas answered that a wrong way of doing business will have been eliminated. Therefore, with more availability we are going to bring into the situation more competition.

REP. MERCER asked Mr. Jones why there are distinctions made between various elements that are in the Unfair Claims Settlement Practices Act. Mr. Jones stated that the bill was passed as a regulatory scheme and it was attempting to regulate general business practices. We chose four elements that go to the heart of either the first party or third party bad faith claims.

REP. MERCER asked Mr. Hoyt if this bill would be a better state of the law for a person as a broadening of the law. Mr. Hoyt answered that personally he feels that the general business practices work against the insurance industry because it is so easy to prove.

REP. THOMAS closed the hearing by stating that Montana is one of the few states that allows this unjustified right of action. The losers of this bill are insurance agents, defense attorneys, and trial lawyers. He sees as the winners of this bill the Montana insurance consumer. There should be more availability, better pricing, better market in which to buy insurance in Montana, and a continued protection against the unfair claims practice.

HOUSE BILL NO. 322, Rep. Eudaily, District #16, sponsor stated that this bill is by request of the Department of Fish, Wildlife and Parks. This is being put forward so there will be an effective statute to act under when the occasional boater and drinking problem arises. The bill established the blood alcohol standards for persons who operate or are in motor boats, vessels or are manipulating water skis or surf boards while under the influence of alcohol or drugs. Courts and prosecutors are familiar with the term under the influence while the term intoxicated is not presently defined in the criminal law context. This is one example of the confusion which is created by the

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

HB240

AMENDMENT NO. 1

Proposed by Randy Gray, Lobbyist for State Farm Insurance Company and National Association of Independent Insurers.

Section 1:

- p. 1, line 13 - after commissioner, insert "(1)"
- p. 1, line 15 - reinsert \$5,000.00
- p. 1, line 16 - strike \$25,000.00
- p. 1, line 17 - after 33-30-1012, insert: "and 33-18-201,"

At the end of section 1(1), insert a new subsection (2) as follows:

"The Commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$25,000.00 upon a person found to have violated the provisions of 33-18-201. The Commissioner is authorized to award up to one-half of any fine levied under this subsection (2) to the complaining party."

Section 4(1):

- p. 5, line 8, after 33-18-201, strike "." and insert: ", provided such insured or third-party claimant has not accepted any award of any fine from the Commissioner pursuant to Section 1(2)."

Section 4(2): delete

STATE AUDITOR'S PROPOSED AMENDMENT TO HB 240

1. Page 4, line 5.

Strike: "this section"

Insert: "subsection (1)(f) and (1)(m)"

2. Page 5, line 23 through line 2, page 6.

Strike: subsection (5) in its entirety

EXHIBIT 6

DATE 1-27-87

HB #240

WRITTEN TESTIMONY OF STATE AUDITOR"
HB 240

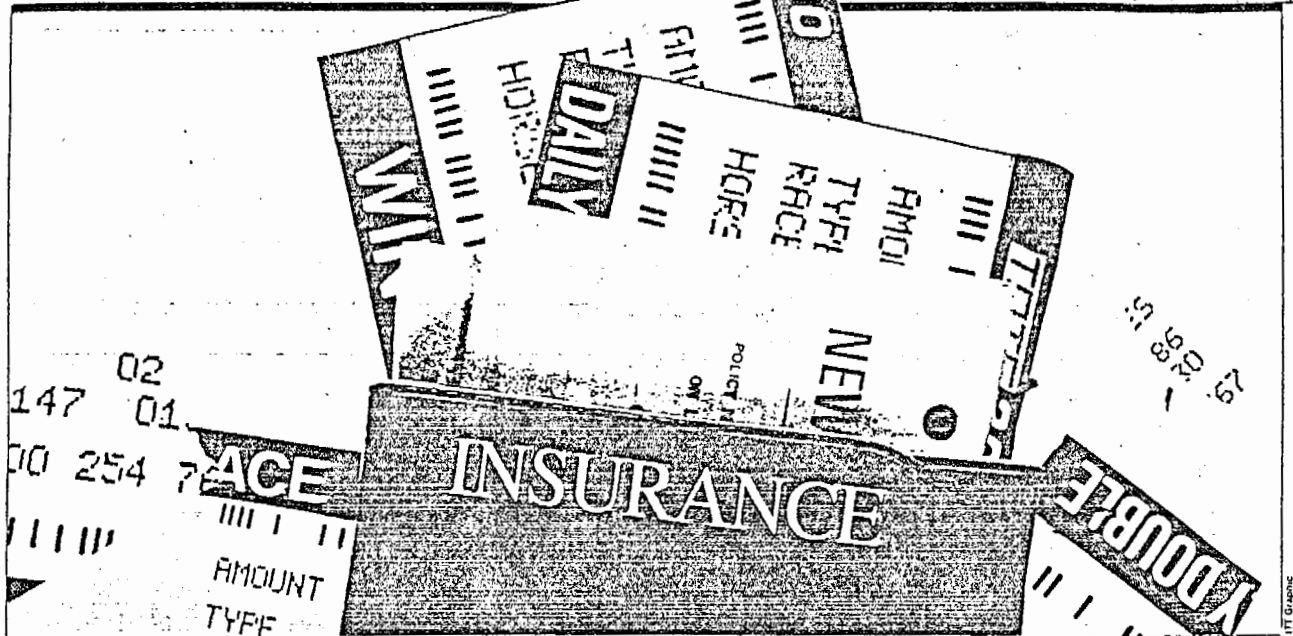
The State Auditor and Commissioner of Insurance supports House Bill 240 with the attached amendments. The State Auditor supports House Bill 240 because its passage should improve the business climate in this state. The amendments proposed by the State Auditor are intended to (1) clarify that subsection (2) of section 2 (page 4, lines 5 through 8) applies only to subsections (1)(f) and (1)(m) of section 2; and (2) eliminate the increase in the plaintiff's burden of proof reflected in subsection (5) of section 4 (page 5, line 23 through line 2, page 6).

House Bill 240 has fiscal impact on the State Auditor's office and a fiscal note should be requested because House Bill 240 encourages insureds and third-party claimants to bring alleged violations of the unfair claim settlement practices statute before the State Auditor rather than before a district court. To enforce House Bill 240, should it pass, the State Auditor will need one attorney to handle administrative hearings, two compliance specialist to investigate and process consumer complaints, one paralegal to assist in preparing for administrative hearings, clerical personnel, and data processing personnel.

The State Auditor supports increasing the amount of the fine that she may impose upon an insurer for violations of the Montana Insurance Code. The current \$5,000 limit is relatively low when compared to the amounts that other states are authorized to levy against insurers for violations of insurance laws and is often lower than the violation warrants.

The first amendment proposed by the State Auditor simply clarifies that subsection (2) of section 2 (page 4, lines 5 through 8) applies only to subsections (1)(f) and (1)(m) of section 2. The State Auditor's second amendment is to delete subsection (5) of section 4 (page 5, line 23 through line 2, page 6) because it is vague and therefore likely to result in increased litigation and because it increases the plaintiff's burden of proof beyond the limit necessary.

The State Auditor requests this committee to consider her proposed amendments. She strongly urges this committee to give House Bill 240 a do pass recommendation.



Reading between the lines of profit policy

By Rebecca Lightsey and Margarita Fournier

DURING THE FIVE YEARS ELAINE Brightwater was a midwife, not a single malpractice claim was filed against her. Yet her liability insurance was cancelled recently. The only policy she can now obtain will cost her \$3,500 a year, a 9,000 percent increase from five years ago, when her annual premium was \$38.

Brightwater's experience exemplifies recent actions by the insurance industry. Mass cancellations of policies and rate hikes are reaching critical proportions. This crisis of availability and affordability of insurance directly affects many Americans.

To solve this crisis, the insurance industry advocates tort reform (see story below).

a proposal that puzzles Brightwater: "We have never been sued. Only 6 percent of midwives have ever been brought to court nationwide. I see no relationship between lawsuits and insurance premiums—at least not for midwives."

New worlds to conquer

In the fall of 1985 the national campaign for tort reform started with a bang, fueled by a \$6.5 million budget raised by the property and casualty insurance industry. Insurance companies enmeshed various business interests in the effort to alleviate "the grave crisis" in liability insurance that they insisted was caused by an excessive American penchant for lawsuits.

Initially the strategy succeeded. Several states amended their tort laws to suit the industry's proposals. But the changes ex-

pected in return—rate reductions and increased availability of insurance—have not materialized. Policy makers and insurance consumers have begun looking beyond the aggressive but poorly documented tort reform campaign and are seeking changes in the insurance industry as well as legal restraints (see story on right).

The insurance industry has tracked a path between boom and bust for the past 50 years. In "crisis" periods, when profitability is relatively low, the industry has challenged and even modified the law. For instance, the last bust cycle in the mid-'70s brought attention to medical malpractice insurance costs; the industry achieved success in many states, making claims against doctors procedurally more difficult to pursue and in some cases capping recovery of damages. But even in the "bust" year of 1984, when the insurance industry registered its lowest profits in 10 years, combined industry profits amounted to \$2 billion, according to the Insurance Information Institute.

This paved the way for an all-out assault on the civil justice system. As Mechlin D. Moore, president of the Insurance Information Institute, a large public relations firm, wrote in the *National Underwriter*: "An effort to market the idea that there is something wrong with the civil justice system... is, in effect, the national pilot effort.... We believe there is a very real opportunity now—probably for the first time—to gain significant legislative change."

Media accounts of outrageously excessive awards in ridiculously frivolous suits have created the impression that filing suit is the response to any wrongdoing. Citing these factors, insurers cease writing types of insurance or virtually price consumers out of the markets. Hidden behind the veil of the legal process, one senses that the insurers are threatened most by profit concerns. Therefore, if they reduce liability, their payouts will decrease.

In calling for "tort reform," insurance companies propose to shrink their liability, restricting the recovery of damages for injury, by limiting awards for pain and suffering; abolishing joint and several liability, which forces solvent defendants to pick up the tabs for insolvent defendants out of line with their shares of responsibility; and total abrogation of punitive damages, commonly cited as a corporate deterrent.

The root of the crisis

Insurers make money in two ways: first, through the difference between the price of

Reform proposals

The complexity of insurance business requires permanent solutions aimed at its fundamental structure. Thus consumer organizations in several states have proposed various insurance reforms designed to make the industry more accountable and equitable, and more likely to engage in irresponsible behavior. These proposals include the following:

• **Sunshine laws.** Companies must provide detailed financial data to the state insurance commissions; and data that would also be accessible to the public. Today only industry insiders know the actual losses and reserves, and their actuaries massage the numbers. What else could explain the 10-year combined profits of \$75 billion without any federal tax payments? The rates should be reviewed periodically by commissions to determine their validity.

• **Public counsel offices.** In New Jersey, an active Office of Public Counsel guarantees that insurance buyers are represented at the rate hearings. Regardless of states' different rate approval mechanisms, establishment of such an office would bring more balance into the rate regulation system.

• **A limit on mid-term cancellation.** Consumers should also demand readable and, if possible, standardized policy forms. Information, such as claims procedures, and a company's record of claim settlements should be readily available.

• **Experience rating.** As illustrated by Florida's malpractice figures, often only a small number of offenders are responsible for most claims there. In a more egalitarian system of rate classification, premiums would be based on the individual's experience. An experience rating system would provide an additional incentive for the policyholders to maintain their good records.

• **Risk management.** Considering that the best cure is prevention, companies would be required to develop and maintain strict "risk management" programs that concentrate on safety.

• **Flex-rating.** Flex-rating, introduced in New York, would limit rate increases and decreases to a plus-or-minus 3 percent range.

Tort reform: what is it?

Technical phrases that mean little to those outside the legal profession are an integral part of the current tort reform debate. These terms represent legal doctrines that play a critical role in the U.S. civil justice system. Below are brief descriptions of those legal theories and their practical applications, which the insurance industry is attempting to change or abolish:

• **Abolish the doctrine of joint and several liability.** This doctrine holds that when more than one defendant is responsible for an injury, any one of those defendants has a responsibility to compensate the innocent party. Without this doctrine, for example, the victims of a toxic waste dump would not be able to recover fully for the harm. The victim would have the burden of proving what share of their injuries was caused by each dump user.

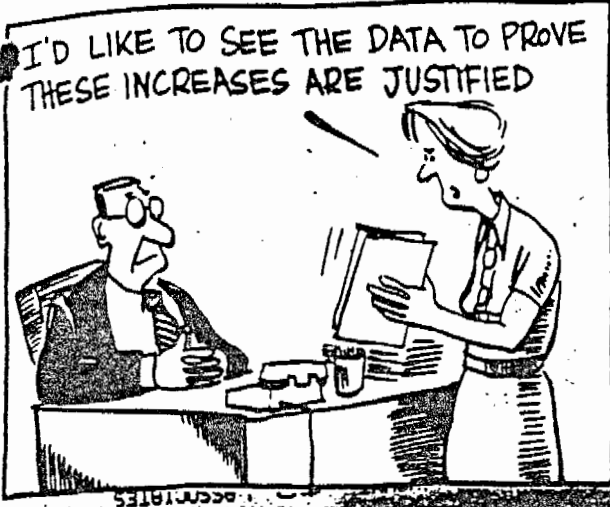
• **Caps on pain and suffering.** Juries award money to injured individuals for both economic damages, such as medical bills, and non-economic damages, such

as the pain some victims suffer after a tragedy. The industry proposes a limit on how much juries in any state can award for pain and suffering, so that, for instance, the daily anguish and aggravation a paraplegic endures would be "worth" only \$100,000. Caps enacted during the malpractice crisis of the '70s were held by some state courts to be unconstitutional.

• **Abolish punitive damages.** Punitive or exemplary damages are the "punishment" levied against wrongdoers, usually corporations, for intentional wrongs. As admitted by many companies, punitive damages is the one social pressure that has most influenced companies' willingness to redesign products according to higher safety standards.

• **Limits on contingency fees.** Most injured people cannot afford the attorneys' hourly rates, so to obtain legal representation they hire lawyers on contingency fee arrangements. The lawyer gets a percentage of an award, sometimes 33 1/3 or 40 percent, but receives no payment if the suit is lost. The system assures that everyone, regardless of their financial resources, has access to the courts. Restricting contingent arrangements would make it more difficult for those without money to hire lawyers.

Continued on following page



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study of the necessity or their consequences, as a response to industry pressure.

As part of its public-relations campaign, the insurance industry publicized awards that it considered excessive, often using numbers that had been reduced by further court action. It counted on public opinion to promote their legislative agenda for tort reform. For a while, this PR campaign overshadowed any legislative need for hard facts.

Not until April of this year did a definitive study of the actual numbers of lawsuits

filed and the average size of awards become available. And when the National Center for State Courts published its survey of the court filings, its statistics conflicted so sharply with general assumptions that they went unrecognized.

The Center, funded in part by state governments, found no lawsuit explosion. The total number of court filings for personal injury claims rose only slightly during the past four years; from 1978 through 1984, tort filings increased 9 percent, while the

Continued on page 22

Individualized law fails in our 'risk-infested' world

By Stephanie Wildman

THE PICTURE MOST OF US HAVE OF the law focuses on individuals—individuals clashing in court, individuals paying other individuals for harming them, individuals charged with violating a law.

That is particularly true regarding accidents, even though, as California Justice Mathew Tobriner said of today's "risk-infested society," "our current crowded and computerized society compels the interdependence of its members."

Underlying modern personal injury law are 19th-century principles that continue to emphasize individual responsibility, using notions such as fault and causation. But in the 20th century, technology has magnified the kind of harm victims may suffer, and the use of insurance and other devices to spread losses have implicitly collectivized responsibility for accidents. Thus legal principles and social reality have diverged.

In the 19th century a growing body of negligence cases firmly established the principle that an injured person must prove that someone responsible for an accident was at fault in order to recover damages. But "fault" is now so ingrained in our thinking it is hard to imagine theoretical alternatives. Yet the law could instead require someone to prove that he or she was not at fault or could require someone involved in an accident to pay regardless of right or wrong. These alternatives penalize activity broadly and seem particularly inappropriate when two individuals are involved.

When two contesting corporations or an individual and a corporation are involved, however, there may be preferable alternatives. Already we have seen how workers' compensation laws and doctrines of strict liability concerning defective products have reduced the emphasis on fault. But "fault" remains central in personal injury law.

With regard to "causation," there is also a conflict of individual and collective responsibility. Nineteenth-century legal writers tried to maintain a doctrine of objective causation to ensure that liability would not be automatically assigned to a rich capitalist defendant with "deep pockets," according to Harvard Law School professor Morton Horowitz. He argues that the doctrine on

causation limits legal liability and denies the interdependence of people by focusing on individual responsibility for injuries. Some courts have modified the harshest application of causation doctrine by looking, for example, at a company's market share of a defective drug to assess the likelihood that the company caused an injury.

While some legal doctrines of personal injury law rest on notions of individualism, others spread responsibility more broadly, much as financial responsibility is collectivized by insurance or losses are spread by tax and price policies. The battle over personal injury law reform, like Proposition 51 in California, occurs in this gray area of conflict between older legal doctrines of individual responsibility and a sense of social responsibility for compensation of accident victims.

Proposition 51, approved in a June 3 referendum, eroded the notion of joint and several liability. This doctrine, which had early roots in common law, evolved from cases where wrongdoers acted in concert to harm the victim. Joint and several liability evolved from these cases to be applied in instances where wrongdoers had not acted in concert and might have been held liable independently. Under this interpretation, independent actors could be joined in one legal action for the sake of efficiency; one harm from multiple causes could be settled in one lawsuit.

Thus a victim could bring one suit against a wrongdoer who drove negligently and broke his or her leg and the doctor who mended it negligently. If one defendant was insolvent, then the victim could still be compensated in full by the other. Joint and several liability shared responsibility and thus conflicted with much of the philosophical basis of personal injury law.

If individual responsibility is stressed, victims may never recover enough to pay for their medical care or rehabilitation. In some instances we already socially share responsibility for risks, such as sharing nuclear power risks through pricing and insurance. More generally, we should acknowledge directly that society will take care of accident victims and not leave them victims of the law as well as their accident.

Stephanie Wildman is a law professor at the University of San Francisco.

Urban poor 'redlined' out

By Gregory D. Squires & William Velez

THE INSURANCE CRISIS FACING many cities, professionals and businesses with the cancellation of their liability insurance has recently grabbed the headlines. But for at least 20 years black residents in central cities have confronted a similar crisis in availability and affordability of homeowners insurance. That crisis will only worsen as the current liability crunch squeezes consumers and companies tighten underwriting practices, exacerbating the redlining and concomitant disinvestment of urban neighborhoods.

Our recent study of Milwaukee is not untypical. Voluntary market homeowners policies sold by the traditional, well-known insurance companies are concentrated in predominantly white and suburban neighborhoods. The FAIR Plan also known as the Wisconsin Insurance Plan, or WIP, a publicly administered but privately financed "insurer of last resort" that provides an inferior quality product for those unable to obtain coverage through the voluntary market, is for the black community.

From data on 18 of the state's largest insurers, we found that in 1983 the number of homeowners policies in force for every 100 owner-occupied dwellings ranged from seven in a nearly all-black inner-city neighborhood to 48 in a nearly all-white suburban community. WIP was concentrated in virtually all-black communities and often did not even exist in white neighborhoods.

Does that pattern simply reflect greater risk in older, poorer, less stable parts of

town? Excluding age of housing, income and residential turnover—factors that the industry claims are associated with risk—there was still a statistically significant relationship between race and the absence of voluntary market policies or presence of WIP policies.

Even profitability cannot explain the pattern. We found no relationship between insurer profitability and market penetration of minority communities. That is, the companies that redlined most did not make more money. Clearly, racial discrimination is an important factor, in violation of state laws.

Besides passing new legislation such as state variants on the federal Community Reinvestment Act that would require insurers to be sensitive to the insurance needs of particular areas, states and cities could develop alternatives. Several cities are now considering municipal insurance programs. Funds that traditional insurers pay out as dividends to stockholders would be reinvested into the community to finance programs to reduce losses, such as smoke alarms, block-watch programs or better building inspection and fire-fighting services. Loss reserves could be deposited in local financial institutions that are committed to neighborhood investment.

Private insurance cooperatives could be established along the same principles. All these institutions could emphasize employment of local residents, purchases from local businesses and use of local offices to become a vehicle for reinvestment. Although greatly restricted in its operations by the insurance lobby, the long-profitable Wisconsin state life insurance fund has proven what a publicly-owned insurance plan can do. It offers a model that might be followed to combat the long-term but worsening problem of homeowner insurance redlining.

Gregory D. Squires and William Velez teach sociology at the University of Wisconsin-Milwaukee.

Insurance

Continued from page 7
population increased 8 percent. The oft-cited litigation explosion thus appears to have been exaggerated.

During the period 1981-84, wrote the Center's Robert Roper, "the source of the perception that there is a litigation explosion may be based on a changing mix of civil cases, increased complexity of cases being filed and widespread media reports of enormous awards in relatively few cases."

A study by the Rand Corporation, partially funded by the insurance industry, also concluded that "the per capita filings have remained stable in the past several years."

Some areas do, in fact, experience high concentrations of suits, specifically medical malpractice and products liability. But these are areas where public confidence is low, in many cases deservedly so. In Florida and Texas, some malpracticing doctors continue to treat patients without reprisals. Three percent of Florida's doctors accounted for 48 percent of the money paid to malpractice victims from 1975 through 1984; one Miami dermatologist settled 34 claims totaling \$1.5 million. And in Texas in 1985, out of 669 complaints filed against doctors that year with the state medical board, only 32 led to serious disciplinary measures.

Product liability cases, in which manufacturers are sued for defective products, often grab headlines. The infamous Ford Pinto with its exploding gas tank, the Dalton Shield that caused 60,000 women to miscarry, and asbestos manufacturing, predicted to cause 20,000 deaths annually until the year 2012, have ended public confidence in corporate concern for health and safety. The Rand Corporation found that "of all the various external social pressures, product liability has the greatest influence on product design decisions." Thus it appears that it is the constant threat of lawsuits

the absence of an actual lawsuit explosion explains why tort reform has not measurably affected insurance rates. In the state of Washington, for example, strict tort laws were enacted this past spring, only to be followed by additional industry requests for rate hikes. One company's representative informed the Washington insurance commissioner that the 50 percent increase requested would have been 80 percent were it not for the new tort changes.

Iowa abolished joint and several liability during 1983, but today the state faces the same problems of availability found in other states.

In Florida, the state legislature enacted most of the tort restrictions the insurance industry demanded, but coupled them with a rollback in premiums. Several of the largest carriers responded by withdrawing their coverage from the market. Although the tort legislation satisfied them, they did not lower insurance rates.

The predictability of losses that some tort alterations may bring to the insurance industry will likely have only a fleeting impact on the built-in cycle of the insurance industry, which is largely tied to larger economic trends. It will, however, have long-term implications for society. Although tort law changes may affect how many people go to court, they do not address the real issues, mainly those of preventing injuries and fair compensation for injuries incurred. On the contrary, restricting tort law will preclude victims of others' negligence from obtaining adequate compensation, leaving open the question of who is responsible for their care.

Recent insurance industry reports indicate that it is recovering from its latest profit slump, with or without tort reform. Although the liability crisis has abated—at least until the next profit slump—questions remain about the role of the American tort system. In a less hysterical atmosphere, fundamental questions about societal responsibility for injured persons need to be addressed.

diffuse risk by spreading cost among a large number of people. Implicit in this rule was a sense of responsibility toward society. But now, in the age of complex technological advances—which can cause unexpected, adverse consequences—spreading risk is increasingly complicated. Recent disasters such as the Bhopal chemical explosion led to large numbers of injuries or deaths. But if insurance companies refuse to underwrite, for example, chemical operations, who will assume the responsibility for potential damage?

It's difficult to imagine any resolution of this question without government intervention. Unfortunately, to date government involvement has focused more on protecting the insurance industry than the public.

Rebecca Lightsey is a representative of a coalition of public-interest groups in Texas working on the insurance and tort issues. Margarita Enunier works with her and is a graduate student at the Lyndon B. Johnson School of Public Affairs in Austin, Texas.

Mao

Continued from page 13

began his cruel "purgings" 10 years before his death, whereas Stalin's "Great Terror" started more than 15 years before he died. Therefore many of the Chinese party workers incarcerated and imprisoned during the years of the "Cultural Revolution" were not only rehabilitated but returned to responsible posts in the '70s.

I don't mean to downplay the contribution of Deng Xiaoping in the renewal of the Chinese economy, society and party. Deng clearly achieved better results in overcoming the Chinese "cult of personality" than Khrushchev was able to achieve with the 20th Party Congress and after it. But who could Khrushchev rely on? The doors of the prisons and camps were open, but most of the people returning home were broken physically, if not in spirit. Among

the Central Committee; they were shot immediately after their arrest or only a little bit later. The only ones still left to the leadership of the country and the party were Molotov, Voroshilov and Kaganovich—and Khrushchev found them much harder to remove from power than the Chinese Gang of Four was for Deng Xiaoping.

History is not a realization of something predestined on high. It is held in the hands of human beings. The responsibility of those who lead great powers is especially heavy. China has not achieved the level of economic and cultural development it might have attained without the "Great Leap Forward" and the "Cultural Revolution," which blocked the development of China and pushed it back into its past. But after Mao's death, China achieved much more than it would have been possible to predict 10 years ago. Changes in the USSR and the People's Republic of China are aiding improvement of relations between them.

It's possible to say with certainty that the memorial to Chairman Mao in Tiananmen Square in Peking will be just as enduring as the mausoleum to V. I. Lenin in Moscow's Red Square. It would be a mistake to enshrine the past or to create new myths around the name of Mao, but it would also be a mistake for us to talk only about the shortcomings and crimes of this person.

I hope that the new Soviet leaders can meet with the new Chinese leaders more than once before this century is over, both in Moscow and Peking. The Chinese leaders will truly consider it an honor to visit the Lenin mausoleum. But likewise a visit to the memorial to Chairman Mao Tse-tung should not be seen as a humiliating procedure to the Soviet leaders.

Roy Medvedev, author of *Let History Judge* and *On Socialist Democracy* among other works, is the leading public democratic socialist dissident living in the Soviet Union.

Translated by Alexander Amerisov and Anne Schmitt.

Banned in South Africa... available in the U.S.

The Anti-Apartheid Campaign You Can Dance To.

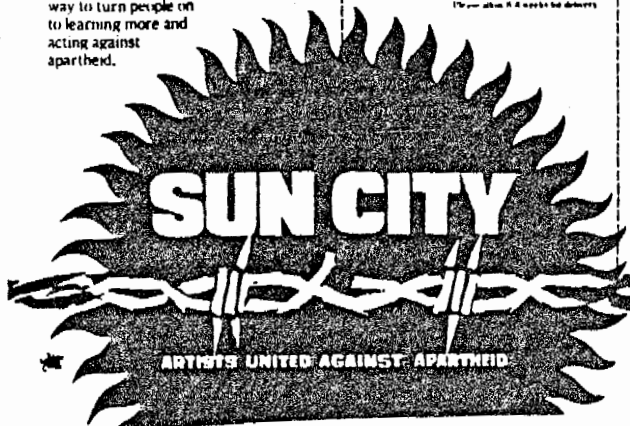
Critics hailed "Sun City" as a powerful musical statement against apartheid. The all-star collaboration features 54 artists, including Little Steven, Bruce Springsteen, Jimmy Cliff, Miles Davis, Bob Dylan and Run-DMC. Together they created a song, an album, a music video, a book and now a 51-minute video cassette.

Now, you can obtain all of these items to inform yourself and others about the struggle for freedom in South Africa. The non-profit Africa Fund, the agency that is distributing the monies raised by "Sun City," offers the records, book and video at a substantial educational discount: 20% off. There's even a teacher's guide to help stimulate discussions in classrooms and communities. It's an ideal way to turn people on to learning more and acting against apartheid.



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AMEND

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BILL NO.

HB 240

DATE

JANUARY 27, 1987

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NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John C Hoyt	GRT FALLS-BELT		X
Tim Robison	Helena	X	
David Bouch	HELENA	X	
Roger McGlenn	INDEPENDENT INS AGENTS HELENA ASSOC. OF M	X	
James L Jones	Billings Mont. Assn of Helena Council	X	
One Neigamon	Billings of Helena Council	X	
Randy Gray	G.F. State Farm, NAIL	X	
Wendy Curran	State Auditor's Office		
Kathy Irigan	" " Office	X	
Bob Correa	Boy Chamber of Com	X	
Karl Edwards	MTCA		X
Joseph Marx	M.P.A		X
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MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 19, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 316:

Rep. Gould moved that HB 316 DO PASS. He moved that a sunset be put on the bill and that a report be presented to the next Legislature. Question was called on the amendment to provide a sunset for the involuntary commitment statute. A voice vote was taken and the motion CARRIED unanimously. Rep. Gould moved that HB 316 DO PASS AS AMENDED. Mr. MacMaster stated that an extension of authority needs to be put on the bill. He pointed out that this is needed because 53-21-106 grants rulemaking authority and Section 102 is amended so the authority needs to be extended to Section 102 as amended. Rep. Gould moved the amendment. Question was called and a voice vote was taken. The motion CARRIED 13-2 with Reps. Hannah and Daily dissenting. Rep. Addy stated that the fiscal note is incorrect with regard to the definition of "mentally ill". He moved to amend page 5, lines 10-15, striking the words "no person". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved DO PASS AS AMENDED. Question was called and voice vote was taken. The motion CARRIED unanimously. HB 316 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 284:

Rep. Darko moved that HB 284 DO PASS. She stated that HB 283 without HB 284 is nothing more than mere language. She moved amendments that ask for the penalties to be softened down to the minimum amount because we have to keep aggravated visitation interference as a felony in order to extradite people from another state. Question was called and voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 284 DO PASS AS AMENDED. Rep. Addy moved to amend HB 284 on page 2, line 4 inserting "without the written consent of the custodial

subcommittee that Rep. Miles proposal is not necessary. Rep. Miles stated that this committee has taken a lot of time to spell out exactly what we mean on such issues and this should be made clear in the bill. Rep. Addy suggested language with regard to the UCC regulations. Rep. Mercer stated that he does not have an objection to that amendment but it should be broadened to say that the action brought under the UCC or the Montana Commercial Code as permitted by 33-18-201 be inserted.

Rep. Mercer moved that amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached).

Rep. Addy moved that HB 592 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 14-1 with Rep. Miles dissenting. HB 592 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 740:

Rep. Cobb moved that HB 740 DO PASS. He moved the proposed amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Cobb moved that HB 740 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 740 DO PASS AS AMENDED.

ACTION ON HOUSE JOINT RESOLUTION NO. 21:

Rep. Mercer moved that HJR 21 DO PASS. Question was called and a voice vote was taken. The motion CARRIED 14-1, with Rep. Addy dissenting. HJR 21 DO PASS.

ACTION ON HOUSE BILL NO. 737:

Rep. Keller moved that HB 737 DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 73 DO PASS.

ACTION ON HOUSE BILL NO. 240:

Rep. Mercer moved that HB 240 DO PASS. Rep. Mercer moved the amendments in their entirety and explained them. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Brown moved to amend on page 5, line 8. Reps. Miles and Mercer agreed with the amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Mercer moved that HB 240 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 15-1. HB 240 DO PASS AS AMENDED.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 19

87
19

JUDICIARY

Mr. Speaker: We, the committee on
report HOUSE BILL NO. 240

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Title, line 4.
Following: "PROVIDING"
Strike: "FOR"
Insert: "A CAUSE OF ACTION FOR AND"

2. Title, line 8.
Following: "33-1-317"
Strike: ", "
Insert: "AND"
Following: "33-18-201,"
Strike: "AND"
Insert: "MCA; REPEALING SECTION"

3. Title, line 9.
Strike: "IMMEDIATE"

4. Page 2, line 2.
Strike: "(1)"

5. Page 2, line 5.
Strike: "(a)"
Insert: "(1)"
Renumber: subsequent subsections

6. Page 4, line 5, through line 8.
Strike: subsection (2) in its entirety

7. Page 4, line 9.
Following: "Section 3."
Insert: "Repealer."
Following: "is"
Insert: "repealed."
Strike: remainder of line 9 through "plaintiff." on line 3,
page 5.

8. Page 5, line 8.
Strike: "(1)(a), (1)(b), (1)(c), or (1)(m)"
Insert: "(1), (4), (5), (6), (9), or (13)"

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COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) BUSINESS & INDUSTRY

RUN TIME 08:32
RUN DATE 04/22/87

CHAIRMAN--SEN. ALLEN C. KOLSTAD
NORMAL SCHEDULE==> SITE: ROOM 410

DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-CAROLYN LINDEN

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REFERRED TO COMM	DATE OUT
HB0228 SWYSGOOD, CHUCK	2/10	3/03	3/3/87 REMOVE AUTOMATIC STAY OF INSURANCE COMMISSIONER'S ORDER UPON APPEAL	CONCUR		3/3/87
HB0232 THOMAS, FRED	2/19	3/05	3/5/87 INCREASE FEE FOR REVIVAL OF CORPORATION AFTER SUSPENSION OR FORFEITURE	CONCUR		3/5/87
✓ HB0240 THOMAS, FRED	3/02	3/09	3/9/87; 3/10/87; 3/11/87 3/12/87 REVISE LAW RELATING TO INSURANCE BAD FAITH CLAIMS	CONCUR		3/12/87
HB0242 HARPER, HAL	2/02	3/13	3/13/87 EXPANDS UTILITY CONSERVATION EXPENDITURES ELIGIBLE FOR RATE BASE INCLUSION	CONCUR		3/13/87
HB0254 THOMAS, FRED	2/02	2/13	2/13/87; 2/16/87; 2/17/87 REGULATE CANCELLATION OR NONRENEWAL OF PROPERTY AND CASUALTY INSURANCE	CONCUR AS AMENDED		2/17/87
HB0257 BRANDEWIE, RAY	2/02	2/20	2/20/87 REVISE LICENSING REQUIREMENTS FOR LAND SURVEYORS	CONCUR		2/20/87
HB0278 GRADY, ED	2/02	3/03	3/3/87 VEHICLE LIAB.--PROCESS CANCELLED POLICY PRO RATA BASIS; RETURN UNEARN. PREM.	CONCUR		3/3/87
HB0310 KITSELMAN, LES	2/03	2/10	2/10/87; 2/11/87 ESTABLISH POLICY FOR APPLICANTS PROVIDING ARCHIT/ENG/LAND SURVEYING SERVICES	CONCUR		2/11/87
HB0332 BROWN, JAN	2/03	2/17	2/17/87 ALLOW PSC TO ISSUE PROTECTIVE ORDERS FOR PROPRIETARY INFORMATION	CONCUR		2/17/87
HB0334 KEENAN, NANCY	2/10	2/20	2/20/87 GENERALLY REVISE LICENSING OF SOCIAL WORKERS, PROFESSIONAL COUNSELORS	CONCUR		2/20/87
HB0362 GLASER, BILL	2/04	3/10	3/10/87; 3/11/87 PENALTY FOR BUILDING CONTRACTOR FAILING TO PAY SUBCONTRACTOR PROMPTLY	TABLED		TABLED 3/11/87

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 9, 1987

The thirtieth meeting of the Business & Industry Committee was called to order by Chairman Allen C. Kolstad on Monday, March 9, 1987 at 10 a.m. in Room 410 of the Capitol.

ROLL CALL: All committee members were present with the exception of Sen. Williams who was excused.

CONSIDERATION OF HOUSE BILL NO. 240: Rep. Fred Thomas, House District 62, Stevensville and Florence, chief sponsor, said the bill generally reforms and updates the Unfair Claim Practices Act of Montana. The bill provides that an insured or third-party claimant has a separate cause of action against an insurer for certain unfair claim settlement practices. The insured who suffers damages as the result of the mishandling of an insurance claim may bring an action only for breach of the insurance contract, for fraud, under the provisions of this bill and not under any other theory of recovery. The insurer is not liable under this bill if the insurer had a reasonable basis in law or fact for contesting a claim. A third-party claimant may not file an action under this bill until the underlying claim is resolved.

He said the biggest thing it does with the Unfair Claim Practices Act is it increases the fine for being guilty of such from \$5,000 to \$25,000 in order to bring it into further compliance with this Act.

PROPOSERS: Jim Robischon, Montana Liability Coalition, appeared in support of HB 240. He referred to section 33-18-201 which was the main subject of the legislation and initially adopted by the legislature as a regulatory statute in which it set forth certain claims practices by insurance companies that should be proscribed and prohibited insurance companies from engaging in these practices with reference to their insureds as a general business practice. He gave further background of the Act. The Supreme Court interpreted the statute as creating a cause of action both in the insured and in third-party against the insurance company. He said that HB 240 attempts to settle some of the questions that have been presented in the cases that have been prosecuted in the courts since the Cloud v. Flink decision. He touched essentially, section by section, on what was provided for in HB 240. He said the bill provides for an updated procedure. He urged passage of the bill.

Randy Gray, representing State Farm Insurance and the National Association of Independent Insurers, said the insurance bad faith climate in Montana had, more than any other single cause, discouraged insurance companies from doing business in the state in the past four years since the Supreme Court decision in 1983. He said they believed the legislature and not the court should be addressing the question of the recovery system under bad faith

in Montana. He said the problem with bad faith is particularly acute in low limits insurance cases and the problem comes up very frequently in automobile liability coverage, which everybody has to have in the amount of at least 25/50,000. The insurance companies settle, in many cases for the \$25,000, because they feel if they don't they expose themselves to much greater amounts of awards for bad faith. This spill-over effect is causing low limits claims to be settled for more than what they are really worth. He said for these reasons the insurance industry strongly supported HB 240, however, he stated the bill didn't go nearly as far as they would like it to; the bill has been substantially watered down from the introduced version, but even so they felt it was an improvement over the present law. He mentioned that HB 442, the punitive damage bill, in conjunction with this bad faith bill, will improve the insurance climate in the state and would attract more companies to do business here. He said he was reluctantly proposing an amendment having to do with the \$25,000 fine authority of the commission. He said they have no objection to the \$25,000 fine but they did have an objection to the fine authority as presently contained in the bill because that fine authority would apply to any violations of the insurance code, not just violations of the Fair Claims Practices Act. He closed his testimony stating that State Farm and the NAIA strongly supported the bill with his amendment.

Thomas A. Grau, partner in Century Agency, Great Falls, said there has been no single incident in the last five years that has had a greater impact than the development of the tort of bad faith. This has caused markets to seriously consider the continued interest in doing business in the state of Montana and has adversely affected him and many of his clients. He said he knew of two companies that have ceased to do business in the state. Since the tort has been developed it has swung the pendulum clearly in favor of the plaintiff and has put undue burdens on the companies. The single biggest implication is that tort, as developed by the Court, did not set a standard of conduct under which it could measure conduct. He said he thought the bill was a first step in establishing a code of conduct that companies could have to view and act upon and believe they would then be in compliance with the laws of the state. He asked that the committee seriously consider passage of the bill.

Ralph Yeager, Governor's Council on Economic Development, Department of Commerce, appeared on behalf of the Council. He said the Council, through its subcommittee on insurance, spent nine months studying tort reform and liability insurance issues. They developed a recommendation in the area of bad faith calling upon the legislature to develop clear and more concise definitions of bad faith as it pertains to insurance claims, policies with financial institutions and wrongful discharge. The Council felt that HB 240 would go a long way toward alleviating some of the problems associated with insurance bad

faith and urged the committee to support the bill.

OPPONENTS: Carl Englund, Montana Trial Lawyers Association, said they primarily represent the insured persons. He said HB 240 deals with what has been described as insurance bad faith and what is really properly described as the right to a private cause of action for lawsuit by someone who has been injured by the failure of an insurance company to comply with the Unfair Claims Practices Act, a 1977 law requiring companies to do and not do certain things to their insured and to people who are injured by the insured. The important part of the bill is found on pages 2, 3 and the top part of page 4 which lists all of the things that are prohibited. To this day, the Act is not vigorously enforced by the insurance commissioner. He went through the Cloudt v. Flink case which was taken to the Supreme Court. This was the first time that the insurance company had been sued, besides the insured, for its failure to comply with the provisions of the Unfair Claims Practices Act and, in particular with #6 which requires an insurer to effectuate settlement after liability has become reasonably clear. This case asked the Supreme Court the question of whether or not the Unfair Claims Practices Act created a private right of action in someone who is injured by a violation of the Act and the Court answered affirmatively in 1983. He said that justice delayed is often justice denied and public policy calls for a meaningful solution to the problem. The Cloudt decision and those following it are the most important decisions for consumers of insurance and for injured persons in the state. They stand for one very simple proposition; insurance companies must abide by the Unfair Claims Practices Act and if they don't they're in big trouble. He said that HB 240 would take some of the teeth out of the law, however, not all. It would do that by limiting the kinds of prohibitive acts which give rise to an individual or a private cause of action and urged the committee to give the bill a do not pass recommendation.

John Hoyt, attorney from Great Falls, said they were not active in the Montana Trial Lawyers Association but were independent attorneys and were at the hearing because they believe independent attorneys need to be heard. He said, after listening to the testimony from both sides, he had a couple of comments. First of all, he said, if a bill is a good bill it has to be fair and workable and that means fair to both parties. He said the insurance companies have an insurance claims settlement manual and everything is set forth in these manuals that is now in the statutes before this bill. They know when they are doing wrong and they know what they have to do to do things right. They are professionals and they know all about this. He said as far as the pendulum swinging toward the claimant, that is rapidly swinging in favor of the insurance industry and the committee should recommend legislation only that is good and if necessary and didn't think the bill was necessary at all. He asked if the committee was going to consider the bill that they consider putting into it the things that are going to protect the consumer

from an insurance company that wants to get away with something it shouldn't. That only affects a few insurance companies; most of the insurance companies in Montana are pretty good and would not be affected by this bill.

DISCUSSION OF HOUSE BILL NO. 240: Chairman Kolstad called for questions from the committee.

Sen. Neuman asked Mr. Hoyt if he had any specific suggestions as to what should be put into the bill to protect the consumer. Mr. Hoyt said he noticed some very large voids in the bill and referred to section 3, page 5, part 3, line 15 - the language says that an insured who has suffered damage as the result of the handling of an insurance claim may bring an action against the insurer for the breach of the contract. One of the worst and most vicious things that happens in our society, and not only insurance companies, is attempted fraud and when there is fraud that is consummated, somebody gets hurt. This provides no action against the insurance company for trying to disobey the law, trying to do things wrong and trying to injure others. If there was such a provision provided, it would be more acceptable. He also said sections 7 and 8 should certainly be in the bill.

Sen. Neuman asked Mr. Robischon to respond to Mr. Hoyt's statement. Mr. Robischon said fraud has to be manifested in several different ways and in several different acts. If the committee would review (a) at line 6 on page 2 of the bill, this is one of the causes of action that is recognized specifically by the bill; prohibiting insurance companies from misrepresenting pertinent facts or insurance policy provisions relating to coverage it issues. Clearly, these facts could be what he believed Mr. Hoyt was describing as attempted fraud, and as you look down these other areas that are specifically being carried over, you'll see again factual situations and relationships that would probably be the grounds for the so-called attempted fraud.

Sen. Neuman then asked Mr. Robischon if the commissioner fined a company for a violation of this Act, could the insurance company then argue that they couldn't be sued by the insured because they had already paid the penalty for the wrong-doing. Mr. Robischon said that wasn't true, however, in the original version of the bill introduced in the House there was that alternative type of remedy set out but it is not in the bill at the present time. The insurance commissioner's actions sanctions a separate, apart from, and in addition to, the rights that are being created under the bill.

Sen. Neuman asked if the \$25,000 is a steep enough fine for violation of the other sections. Mr. Robischon stated that at the hearings in the House committee, the increase of the fine was discussed and the testimony was for whatever value, this amount should get the attention of the insurance company as to the commissioner's sanctions. He said to also keep in mind that

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this is in addition to liabilities that would be imposed under the Fair Claims Practices Act.

Sen. Neuman asked Mr. Robischon, of the sections that are not enumerated in the bill, if there are problems, then the only recovery comes to the auditor's ability to fine for violations of those sections 2, 3, 6 or whatever sections that are not enumerated. Mr. Robischon said that was not true and the provisions for sanctions apply to all the subsections of the Act. Sen. Neuman then stated that if someone who is injured can't bring an action because of #7 or #8, that are not in the bill, could they complain to the auditor and she could then fine the company. Mr. Robischon answered affirmatively.

Sen. Walker asked Rep. Thomas to refer to page 6, lines 6-9, where it stated an insurer was not being held liable under this section, if the insurer had a reasonable basis in law or in fact for contesting the claim - he said he did not have much problem with that but asked why the words "or in fact" on line 8 are in there and said it appeared to him to be pretty loose. Rep. Thomas deferred to Mr. Robischon who explained that there are two issues that could be presented by an insurance company as a justification for what they had done. One would be that there is a dispute as to the factual situation; that the facts alleged by the third party are not the true facts. The other would be assuming that the facts are agreed to, or there is no dispute as to the facts, then there could be a dispute as to in law, whether or not on the basis of those agreed facts, there was a reason for denying the claim. So, it deals with the factual aspects and the legal aspects of the claim.

Sen. Walker asked if the factual aspect isn't taken care of under a contractual agreement. Mr. Robischon said this section deals more with the third party claims and that is a claim in which there is a claim against the insured for negligence and there is a dispute surrounding the facts of the accident that gives rise to the claim of negligence. This is directed more toward the third party claim than it is to the first party insured.

Sen. Walker inquired of Mr. Hoyt if this would leave some loopholes where they could just dispute the facts. Mr. Hoyt said what worries the insurance industry is that when they get caught violating the law they may have to pay punitive damages. He said that HB 442 has tightened up the punitive damages law very drastically, too drastically in some instances, but part of it is there must be clear and convincing evidence. But, this language is in the law now.

Sen. Weeding asked Mr. Hoyt his response to Mr. Robischon's statement concerning 30-18-201 on page 2 being adequate to deal with the area of attempted fraud. Mr. Hoyt said he did not agree at all and said attempted fraud is a peculiar species of a problem. If there is no penalty for attempted fraud and

X? they are not caught they get off "scot free" unless there is some damage. He referred the committee to line 15, page 5 which says that an insured who has suffered damages as a result of the handling of insurance claim is attempted fraud and attempts to do something vicious, wrong or unlawful and they are caught so they don't get away with it - there may be no damages. He suggested at line 15, page 5 they substitute "an insurer who has damaged or attempted to damage an insured or third party claimant may bring an action against the insurer, etc." and felt that would cover that loophole.

Sen. Thayer stated that Mr. Hoyt had mentioned a problem with #7 and #8. Mr. England said in the discussions in the House as to which sections would be included in the new section 3, they were trying to include only those very serious violations of the Unfair Claims Practices Act. Therefore, they excluded things that were basically minor. He agreed that some of the prohibitions listed in the Act are not as important as others. He felt that #7, which is basically an insurance company compelling an insurer to initiate litigation in order to receive what he should have received and #8 which is an attempt to settle claims for less than the amount to which a reasonable man believes he is entitled to - these are both serious violations of the Act and ought to be included in the list in section 3, so on page 5, line 11, following #6, he said #7 and #8 should be added and the same thing on line 25.

Sen. Neuman asked why #7 and #8 were not included. Mr. Gray said the idea of the bill as originally proposed was to create a balancing and the bill as introduced had only four specific violations of 30-18-201 as grounds upon which to bring bad faith claims. Those four have now been expanded to six; now there is a proposal to add two more which would be eight out of the original fourteen prohibited conducts under that section. He believed that #7 and #8 were already covered under other provisions of the bill. There is a penalty under this bill if there is attempted fraud; the insurance commissioner can still fine a carrier \$25,000 - up to that - for even these attempted acts. He wished to assure the committee that \$25,000 is a substantial fine and would get the attention of the insurance company.

Sen. Neuman asked about the statement that the commissioner is not enforcing this now and wondered if there were a number of these things arising now or if it was pretty rare. Rep. Thomas deferred to Ms. Irigoin of the Insurance Department. She said the auditor's office had only brought one administrative hearing under the Unfair Claims Practices Act and that was in 1982. She said they do use the Act on a daily basis to address consumer complaints; they do use it a lot but only had one administrative hearing under the Act. (See EXHIBIT 1)

There being no further questions, Rep. Thomas closed on HB 240, and asked Mr. Robischon to respond on the #7 and #8 question and the fraud question.

Mr. Robischon said he would pass on #7 and #8 as he believed Mr. Gray had accurately explained those sections. He asked the committee to refer to the proposal by Mr. Hoyt referring to fraud on line 18, page 5. This provision specifically reserves to the insured his right to bring an action for fraud. Fraud, in the contract sense, which is what this is as it is a contractual relationship between the insured and the insurer - fraud includes not only the actual fraud but implied fraud which is a lesser degree of fraud and is defined in the contract law already. He said he was not aware of any definition in any statutes or in any of the cases in Montana of attempted fraud. He believed that attempted fraud is covered by the law of implied fraud and that cause of action is reserved to the insured under this statute.

In closing further, Rep. Thomas stated that litigation of bad faith is too lucrative to refer a case to the auditor and ask that office to please punish the company. He said that increasing the fine would definitely increase the use of the Unfair Claims Practices Act and felt that \$5,000 was not too high and \$25,000 would get more attention. He said the bill defines the rules of the game and makes them far more fair and equitable than they are now. He felt the bill is fair and equal and would not carry the bill if he did not think so. Any client should be treated as fairly, as honestly and as equally as they should be.

The hearing was closed on HB 240.

CONSIDERATION OF HOUSE BILL NO. 803: Rep. Bud Campbell, House District 48, chief sponsor, said the bill cuts through the red tape and streamlines the licensing procedures for the insurance industry. It generally revises certain provisions of the insurance laws relating to licensing and regulation of agents, solicitors, adjusters, consultants, and administrators. Section 1 contains a definition of "consultant."

Chairman Kolstad stated that he was confused with the Statement of Intent that was with the bill. Rep. Campbell said the wrong Statement was attached to the bill in the House. He thought Ms. Irigoin would clear up the Statement of Intent problem.

PROPONENTS: Kathy Irigoin, representing the State Auditor and Commissioner of Insurance, said that the bill is to clear up some of the irregularities in the agent licensing law. She submitted her written testimony. (EXHIBIT 2) Following her testimony she explained the Statement of Intent. (EXHIBIT 3) The House of Representatives struck the Statement of Intent on 3rd Reading under the impression that it was the wrong Statement. She felt they thought it was the wrong one as the Statement refers to sections 15 and 16 as giving the commissioner rulemaking

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/9/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS			✓

Each day attach to minutes.

3/9/87

Business & Industry

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

WRITTEN TESTIMONY OF STATE AUDITOR'S OFFICE
HOUSE BILL 240
March 9, 1987

The State Auditor and Commissioner of Insurance supports House Bill 240. The State Auditor supports House Bill 240 because insurance is based on predictability. House Bill 240 makes an insurer's liability for bad faith more predictable. Its passage should consequently improve the business climate in this state.

When testifying before the Joint Interim Subcommittee on Liability Issues and the House of Representatives, the State Auditor's office suggested that House Bill 240 would have fiscal impact on the State Auditor's office. Initially, the intent of House Bill 240 was to encourage insureds and third-party claimants to bring alleged violations of the unfair claim settlement practices statute before the State Auditor rather than before a district court. To enforce House Bill 240, as introduced, the State Auditor would have needed one attorney to handle administrative hearings, two compliance specialist to investigate and process consumer complaints, one paralegal to assist in preparing for administrative hearings, clerical personnel, and data processing personnel. House Bill 240 was amended by the House and appears to leave review of bad faith claims with the District Court, not the State Auditor. If House Bill 240 is not intended to have bad faith claims heard by the State Auditor's office, it has no fiscal impact to the State Auditor's office.

The State Auditor supports increasing the amount of the fine that may be imposed upon an insurer for violations of the Montana Insurance Code. The current \$5,000 limit is relatively low when compared to the amounts that other states may levy against insurers for violations of insurance laws and is often lower than an insurance code violation warrants.

The State Auditor requests this committee to give House Bill 240 favorable consideration.

MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 10, 1987

The thirty-first meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10 a.m. on Tuesday, March 10, 1987, in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 362: Rep. William Glaser, House District 98, Billings, chief sponsor of this bill stated that in the construction industry builders are getting payments on work done for material delivered as the work progresses. Generally these payments are monthly in nature and follow the actual expenditures on the part of the contractors, subcontractors and suppliers by about 30 to 45 days. Some of the contractors and subcontractors because of either bad management practices or devisive management don't forward to their subcontractors, or material suppliers their share of the progress payments in a timely manner. He explained that by "devisive management" he was referring to when contractors or subcontractors in their search for very narrow margins of competitiveness in construction projects, make a decision up front that they are going to hold the money for the subcontractors and materials suppliers for 90 days, etc., so that they can put that into a money market and gain a one or two percent advantage on a construction project. This is all it takes quite often to get a construction project. Rep. Glaser feels that there are two positive gains under HB 362. Number one is that it will give an incentive for people to pay their subcontractors and materials suppliers when they are paid and secondly, it will make good contractors who pay their bills promptly more competitive when bidding against poor contractors. He explained that the bill is patterned after a Louisiana law which says that if you haven't paid your subcontractors in 21 days the contractor or subcontractor (whichever didn't pay the bill) owes the contractor, or materials supplier under him an additional one-half of one percent per day up to 15 percent as a penalty for not paying. Under HB 362 the time limit is increased up to 30 days versus 21. Rep. Glaser stated that this is in regard to money that has already exchanged hands from the owner to a superior contractor in the line of things who should, with dispatch, pay those who are under him. Rep. Glaser told the committee that he had

DISCUSSION OF HOUSE BILL NO. 401: There were no questions regarding the bill.

EXECUTIVE ACTION ON HOUSE BILL NO. 401:

Sen. Darryl Meyer moved that House Bill 401 BE CONCURRED IN. Sen. Walker Seconded the MOTION and it PASSED UNANIMOUSLY.

DISCUSSION OF HOUSE BILL NO. 240: Sen. Meyer presented proposed amendments to HB 240 at the request of Mr. Carl England. Ms. McCue explained that all of the amendments were on page five and have to do with which of those provisions of 33-18-201, if violated by the insurer, would cause you to have an independent cause of action. The amendments would add subsections seven and eight. Chairman Kolstad asked Mr. John Hoyt if he supported the proposed amendments and he answered affirmatively. Sen. Neuman stated that he was not in agreement with them and now felt that if subsections seven and eight were included everything would be back to its original form before the bill. Sen. Williams asked if Rep. Thomas was aware of the proposed amendments and Mr. Hoyt said he didn't know. Chairman Kolstad stated that the committee would hold the bill for further study. (EXHIBIT 5)

DISPOSITION OF HOUSE BILL NO. 806: Sen. Mike Walker MOVED that House Bill 806 BE AMENDED. The MOTION was Seconded by Sen. Darryl Meyer and PASSED UNANIMOUSLY.

A MOTION by Sen. Darryl Meyer that House Bill 806 BE CONCURRED IN AS AMENDED was Seconded by Sen. Mike Walker. It PASSED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 803: Sen. Mike Walker MOVED that the STATEMENT OF INTENT BE ADOPTED. The MOTION was Seconded by Sen. Harry McLane. It PASSED UNANIMOUSLY.

A MOTION by Sen. McLane, Seconded by Sen. Walker that House Bill 803 BE CONCURRED IN PASSED with Sen. Neuman voting "no".

Chairman Kolstad announced that House Bill 417 would be held in the committee until further research and study was completed on the bill.

Business & Industry COMMITTEE
50th LEGISLATIVE SESSION -- 1987

Date 3/10/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

Amendments to HB 240

Third reading (blue) copy

1. Page 5, line 11.
Following: "(6),"
Insert: "(7), (8),"
2. Page 5, lines 15 and 16.
Following: "(3)" on line 15
Strike: remainder of line 15 through "claim" on line 16
Insert: "If an insurer has damaged or attempted to damage an insured in the process of handling an insurance claim the insured"
3. Page 5, line 18.
Following: "fraud,"
Insert: "for attempted fraud, for any other intentional tort,"
4. Page 5, line 25.
Following: "(6),"
Insert: "(7), (8),"

REPORT ON TABLED BILL WITH AMENDMENTS

SENATE BUSINESS AND INDUSTRY COMMITTEE

MARCH 10, 1987

HB570 ALLOW RETAIL GOLF COURSE ALL-BEVERAGE LICENSE FOR PRIVATE
AND PUBLIC COURSES

EXECUTIVE ACTION ON HB570:

- 3/6/87 -- Amendments ADOPTED on Motion of Senator Williams (See Below).
- 3/6/87 -- A motion by Senator Williams, seconded by Senator Meyer that HB570 BE CONCURRED IN AS AMENDED resulted in a failed motion due to a TIE VOTE. Senators Neuman, Hager, Williams, Walker and Kolstad voted in favor of the motion. Senators Thayer, Boylan, Weeding Meyer, and McLane voted against the motion.
- 3/10/87 - HB570 was reconsidered by the Committee on a motion by Senator Williams.
- 3/10/87 - A motion to ADOPT the Amendments to HB570 made by Senator Williams passed unanimously. (See Below.)
- 3/10/87 - The motion that HB570 BE CONCURRED IN AS AMENDED was made by Senator Williams and seconded by Senator Walker. The motion resulted in a tie. Senators Thayer, Meyer, Walker, Kolstad and Williams voted in favor of the motion. Senators McLane, Hager, Weeding and Boylan voted against the motion. /Neuman
- 3/10/76 - A motion by Senator Boylan to Reconsider HB570 passed. (Senators Walker and Williams Voted NO.)
- 3/10/87 - A motion made by Senator Boylan that HB570 be TABLED was seconded by Senator McLane. The motion carried with Senators Walker and Williams voting NO.

AMENDMENTS TO HB570 Third reading (blue) copy as adopted by the Business & Industry Committee on 3/6/87 & 3/10/87:

1. Title, line 5.
Following: "COURSE"
Insert: "OR A PUBLICLY OWNED GOLF COURSE BEER AND WINE LICENSE IS ISSUED"
2. Page 1, line 20.
Following: "beverages"
Insert: "and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine"
3. Page 1, line 21.
Following: "BUILDING"
Strike: "OF"
Insert: "OR"

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5
DATE 3-10-87
BILL NO. H.B. 240

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 11, 1987

The thirty-second meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad at 10:06 a.m. on March 11, 1987 in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 94: Rep. Clyde Smith, House District 5, Kalispell, chief sponsor, said the bill makes it optional for the state workers' compensation fund to be a member of a rating organization. Presently, the fund must belong to such an organization and this merely makes it optional.

PROPONENTS: Jim Murphy, Bureau Chief for the State Fund, said the division supports HB 94 and explained his written testimony which is attached. (EXHIBIT 1) He explained that the National Council on Compensation Insurance, to which they belong, adjusts premiums to policyholders based on their actual experience and they do this for, not only the State Fund, but for all insurance carriers in the state of Montana and many other states. The State Fund is required to belong to this NCCI at the present time. He said they have been experiencing some problems in obtaining the experience mod factors on a timely basis and may have problems in the future getting experience mod factors, because of the rate structure here, which truly represent the experience of the policyholders. He urged passage of HB 94 which would give them the flexibility to deal with any problems in the future before a crisis and they would be unable to act because of current statutory language.

Keith Olson, Executive Director of the Montana Logging Association, said that as a result of this, private carriers have quit writing workers' compensation in the state of Montana, those customers have had to go to the State Fund for coverage and that Fund has to obtain from NCCI an experience modification for those people. As much as a year after going to the State Fund from the private sector, some of their members, received experience mods that were back dated to the first of each fiscal year. On December 23 of 1986, one of the members received an experience mod of 1.48, effective July 1, 1986 which gave him an unfunded premium of \$23,000 which he suddenly owed the state. This has happened several times since, he said. He said they believed this legislation would help the state put their clients on a proper operating schedule much quicker.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL NO. 94: Chairman Kolstad called for questions from the committee. Sen. Boylan asked if this would be contracted out, done in-house and how much did it cost to obtain this information. Mr. Murphy said that presently they

long time to wait after failing the test twice. That would mean he would have to work under supervision for two years.

There being no further questions from the committee, Rep. Corne' closed on the bill, stating that if the committee concurred in the bill, Sen. Hager would be willing to carry it in the Senate.

The hearing was closed on HB 443.

DISPOSITION OF HOUSE BILL NO. 443: Sen. Williams MOVED HB 443 BE CONCURRED IN, seconded by Sen. Walker, with the Statement of Intent. However, Ms. McCue said she had a problem with the Statement of Intent in that it appeared to be just statements of fact and the purpose of the statement is to give some directive as to what kind of rules are needed. Therefore, she felt there should be some language added defining unprofessional conduct. She asked the committee for their feeling. She felt they should contact the sponsor to see if there was some directive he would like to put in the statement or if he was satisfied with it as it is.

Chairman Kolstad asked if there could be a simple statement added to the end of the statement of intent to make it a little more complete. Ms. McCue said that would be possible and she didn't think it satisfied the requirement of a statement of intent as it is now. It contains nothing as to the rulemaking. She said if they could tell her what kind of rules they wanted, she could put it into the proper verbage.

Dr. Beaman said there is already concern in the law regarding alcohol abuse and drug abuse as unprofessional conduct. Ms. McCue said perhaps a statement could be added saying that these rules should follow what they are using now and asked Dr. Beaman to advise her on those rules.

Sen. Neuman asked if this, in any way, expanded the third party payment and Dr. Beaman said currently, a psychologist licensed in the state, does have third party reimbursement - nothing would change in that area.

The question being called, the MOTION CARRIED UNANIMOUSLY.

DISPOSITION OF HOUSE BILL NO. 569: Sen. Walker MOVED HB 569 BE CONCURRED IN, seconded by Sen. Meyer. The MOTION CARRIED UNANIMOUSLY.

DISCUSSION OF HOUSE BILL NO. 240: Chairman Kolstad inquired of Ms. McCue if she had done anything on HB 240. Amendments were proposed by Carl England to which Mr. Drake was adamantly opposed. Sen. Walker commented that this was covered in other sections of the bill, according to Mr. Robischon at the hearing, and therefore, the amendment was not needed. He had no problem with the bill as written.

Sen. Thayer said that the Rep. Thomas had contacted him and he was against the amendments.

Chairman Kolstad asked the committee members to discuss the amendments with Rep. Thomas before action is taken on the bill. It was felt it was a very important bill to the industry and the committee wanted to do what was right with the bill. Executive action was delayed until March 12, 1987.

DISPOSITION OF HOUSE BILL NO. 362: This bill, by Rep. Glaser, was opposed by the Contractors Association, according to Chairman Kolstad. Sen. Thayer MOVED HB 362, BE NOT CONCURRED IN, seconded by Sen. Boylan.

Sen. Thayer, speaking on the motion, said the way the bill was written there were some real problems with the bill. He felt somebody could demand progress payment even though they hadn't fulfilled the requirements of the lien releases. Another thing that was important and was pointed out in the testimony was that these people have the opportunity to address all of this in their subcontracts anyway.

Sen. Walker stated that there are not a lot of contractual agreements involved in most cases. It is not really the policy in most cases, he told Sen. Thayer.

Sen. Williams felt that if the bill were to pass the contractor would require the subcontractor to have a bond for everything. Chairman Kolstad said it seemed that it would get very involved. It was brought out that it is quite costly to get a bond and sometimes impossible. Sen. Williams said if the general contractor had to live by this law, he would make sure that the subcontractor had a bond.

The question being called, the MOTION to Be Not Concurred In CARRIED, with Sens. Walker and Neuman voting "no".

Ms. McCue pointed out to the committee that if this bill would happen to be revived, there were a couple of technical problems that would require amendments. The statutes that were mentioned were going to be repealed in the mechanics' lien bill, which had passed the Senate and was to be heard in the House on March 12th and that bill is expected to pass - the big revision of the mechanics' lien law that came out of the interim committee.

Discussion was held concerning laying the bill on the table and Chairman Kolstad felt the amendments should be adopted before the bill is laid on the table.

Sen. Thayer MOVED RECONSIDERATION OF HB 362, seconded by Sen. Boylan. The MOTION CARRIED UNANIMOUSLY.

RECONSIDERATION OF HOUSE BILL NO. 362: Sen. Thayer MOVED THE

ROLL CALL

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/11/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 12, 1987

The thirty-third meeting of the Business and Industry Committee was called to order by Chairman Allen C. Kolstad on Thursday, March 12, 1987, at 10 a.m. in Room 410 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 823: Rep. Carolyn Squires, House District 58, Missoula, sponsor, said the bill would revise the laws relating to group disability insurance. This bill would make the health coverage for disabilities complete. Section 1 of the bill covers newborns, she told the committee. She explained the bill, section by section. She introduced Robert Throssell from the State Auditor's Office, who provided some clarification of the issue.

PROPOSERS: Robert Throssell, State Auditor's Office, submitted written testimony, EXHIBIT 1, and said that HB 823 was amendments to the existing health insurance law to provide for the same coverage that is provided for by individual policies. He went through his testimony with the committee.

Judith Carlson, Montana Chapter, National Association of Social Workers, complimented the auditor's office for responding to consumer complaints and strongly supported Rep. Squires' bill which would close the loophole for mental health services and provide equal treatment for insurers.

Holly Kaleczyc, representing the Montana Psychological Association, said they were very much in support of Rep. Squires' bill. She also appeared representing the Montana Mental Health Association for Joy McGrath and submitted written testimony. (EX. 2)

Mike Murray, Chemical Dependency Programs throughout the state of Montana, asked for support of the bill. He said they find, more and more, in their treatment programs, Montana residents who receive dependency treatment and the burden of paying for those treatments falls on the family rather than on the employer who is from out of state.

Steve Waldron, representing Montana's community Mental Health Centers, said he too, would like to compliment the auditor's office for responding to the consumer complaints which have been taken care of in this bill. It is an issue of fairness; it is unfair that some group insurance plans don't have to provide the coverage that most others do. He urged the committee to concur in the bill.

Margaret Crowley, Mental Health Centers in western Montana, urged support of HB 823.

probably have to go after the insurance company that got the information.

Sen. Neuman pointed out to Ms. Irigoin if HB 240 should pass that would go up to \$25,000. She replied that is only for violation of the insurance code by an insurance company.

There being no further questions from the committee, Rep. Sands closed his presentation of HB 499.

DISPOSITION OF HOUSE BILL NO. 499: Sen. Weeding MOVED HB 499 BE CONCURRED IN, seconded by Sen. Hager. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE SESSION:

DISPOSITION OF HOUSE BILL NO. 240: Chairman Kolstad noted that HB 240 had been held over several days to determine what was to be done with it.

Sen. Walker asked Randy Gray, as Mr. Robischon said, that putting sections 7 and 8 would be a duplication of services as it was covered in other sections, if that was correct. He replied that was their opinion; that 7 and 8 were included in #6.

Sen. Neuman MOVED THAT HB 240 BE CONCURRED IN, seconded by Sen. Boylan. Sen. Neuman felt if the amendments were adopted it would turn the bill back to the current law and nothing would be accomplished. Sen. Weeding asked that it be entered into the minutes that the committee understood sections 7 and 8 are already covered in section 6, therefore, sections 7 and 8 were considered unnecessary.

Sen. Williams asked Mr. Gray what it would do to the bill if only section 7 was added. Mr. Hoyt replied that when the bill was first introduced in the House there were only four of the 14 subparts of the fair claims practices act covered by the bill. They felt those four subparts covered by this bill were the most outrageous conduct that insurance agents could engage in. Now, as the bill has come out of the House, they added two more sections. He said that each time a new section of the fair claims practices act is added in, it detracts from the basic purpose of the bill.

Mr. John Hoyt was asked to respond to this and he said that Mr. Robischon had testified that subsection 7 and 8 were actually included in the other subsections that are in the present bill. If that was true, 7 and 8 were unnecessary; however, if that is the case, why did they oppose sections 7 and 8. He said there was something inconsistent with that position concerning those sections. He said they had proposed some amendments which had met with opposition and suggested a compromise; that the amendments they had proposed not be passed but that subsection 7 be reinserted into the bill.

Mr. Hoyt said because that is an important section, he would like the secretary to note that the proponents of this bill have stated, and take the position, that the evil described in sections 7 and 8 are encompassed in the other four remaining out of the 14. He said they want a system that would work and a system that is fair. He said they hope that everybody can get together and live under rules that are rules of decency, good judgment, good business, good people and good environment.

Sen. Thayer asked Mr. Gray to respond to Mr. Hoyt's statement that if sections 7 and 8 are already covered why are they opposing them in the bill. Mr. Gray responded that each of the 14 provisions in the fair claims practices act are essentially a matter of degree and section 7 is already covered by section 6. He said it was their position that what needs to be done with the bill is to restrict the application of the bill to as few sections as possible, but include in those sections the worst kinds of conduct. They felt they have gone beyond that with six of the sections included where they started out with four.

Discussion followed concerning proposed amendments regarding the addition of sections 7 and 8 to the bill.

The question being called, the MOTION CARRIED UNANIMOUSLY with eight members present. The two absent members will be allowed the opportunity to vote on the bill, however, it would not change the outcome of the vote.

DISPOSITION OF HOUSE BILL NO. 417: Chairman Kolstad stated there were proposed amendments to the bill. The amendments were distributed to the committee members on March 11, 1987 along with a letter from Patrick Melby, which was shown as Exhibit 3 for that day.

For purposes of discussion, Sen. Neuman MOVED HB 417 BE CONCURRED IN, seconded by Sen. McLane.

Mr. Melby was requested to explain the proposed amendments. Mr. Melby said their first amendment submitted at the hearing was page 4, line 15, following "5%". The purpose of that amendment was to make it very clear that a manufacturer of Montana made products had to have both preferences in order to get the contract. The second amendment, he said, was attached to his letter (Exhibit 3 on 3/11/87) that was prepared on behalf of Norther School Supply and Johnson Controls, which would expand the definition of "resident" to include a foreign corporation that maintained a place of business in the state and who paid property taxes, directly or indirectly, and which employed up to 10 bonafide residents of the state. He said this was quite a departure from the bill as it was originally introduced.

Business & Industry COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/12/87

NAME	PRESENT	ABSENT	EXCUSED
ALLEN C. KOLSTAD, CHAIRMAN	✓		
TED NEUMAN, VICE CHAIRMAN	✓		
PAUL BOYLAN	✓		
TOM HAGER	✓		
HARRY H. McLANE	✓		
DARRYL MEYER	✓		
GENE THAYER	✓		
MIKE WALKER	✓		
CECIL WEEDING	✓		
BOB WILLIAMS	✓		

Each day attach to minutes.

COMMITTEE ON

Business & Industries

DATE

3/12/87

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
JUDITH H. CARLSON	NASW, MT COUNCIL	823	X	
Robert J. Campbell	Self-Advisor to MSPHA	HB 165	X	
Steve Waldron	Mental Health Centers	823	X	
John L. Myers	Mental Health Center - Billings	823	X	
Theresa L. Gierke	Mont. M. H. Council	823	X	
Nancy Briggs	Mental Health - Helena	825	X	
Theresa L. Gierke	Mental Health Center	823	X	
V. Th. Deen	Mental Health Center	823	X	
Glenn H. Deen	MENTAL HEALTH CENTER - GILLESPIE	823	X	
Dick Hruska	✓ ✓ ✓ ✓	823	X	
Ramona Turnbull	✓ ✓ ✓ ✓	823	X	
Leads Mangual	✓ ✓ - -	823	X	
Frank L. Lave	Eastern Mont. M. H. C.	823	X	
Don L. Lave	Health Ins. Assoc. of America	823		X
Mike Murray	Chemical Dependency Program	823	X	
ROBERT THROSELL	STATE AUDITOR	823	X	
Holly Klegys	MT Psychological Assoc MT Mental Health Assoc	823	X	
Robert H. Lihewic	MSPHA	HB 165	X	
Bill Warfield	Mental Health Services Inc. (Board Chm.)	823	X	
Bob White	WESTERN STATES INS	240	X	
Roger McGlenn	INDEPENDENT INS. AGENTS ASSOC. OF MT	240	X	
Larry Greig	State Farm + NAHL	240	X	
Kathy Irigoin	State Auditor's Office	240 499	X	
Glenn Deane	Am Ins Ass'n	240	X	
Bonnie L. Topsy	Alliance of Am Insurers	240	X	
John C. Hoyt				X

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

MARCH 12, 1987

MR. PRESIDENT

We, your committee on BUSINESS AND INDUSTRY

having had under consideration HOUSE BILL No. 240

THIRD reading copy (BLUE)
color

THOMAS (NEUMAN)

REVISE LAW RELATING TO INSURANCE BAD FAITH CLAIMS

Respectfully report as follows: That HOUSE BILL No. 240

BE CONCURRED IN

~~XXXXXX~~
~~DO NOT PASS~~

~~XXXXXXXXXX~~
~~DO NOT PASS~~

ALLEN C. KOLSTAD,

Chairman.

HOUSE BILL NO. 240

INTRODUCED BY THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CAUSE OF ACTION FOR AND THE SUSPENSION OF LEGAL PROCEEDINGS IN CERTAIN INSURANCE CLAIM SETTLEMENT CASES; INCREASING THE FINE THAT MAY BE IMPOSED FOR VIOLATION OF THE INSURANCE CODE; AMENDING SECTIONS SECTION 33-1-317, 33-18-201,--AND MCA; REPEALING SECTION 33-18-241, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-1-317, MCA, is amended to read:

"33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 \$25,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 2.---Section 33-18-201, MCA, is amended to read:

"33-18-201.---Unfair---claim---settlement---practices prohibited. (1) No person may, with such frequency as to indicate a general business practice, do any of the following:

(1)(a) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2)(b) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3)(c) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4)(d) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5)(e) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6)(f) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7)(g) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in

1 actions-brought-by-such-insureds;
 2 {8}{h}--attempt-to-settle-a-claim--for--less--than--the
 3 amount--to-which-a-reasonable-man-would-have-believed-he-was
 4 entitled-by-reference--to--written--or--printed--advertising
 5 material-accompanying-or-made-part-of-an-application;
 6 {9}{i}--attempt--to--settle--claims--on-the-basis-of-an
 7 application-which-was-altered-without-notice-to-or-knowledge
 8 or-consent-of-the-insured;
 9 {10}{j}--make---claims---payments---to---insureds---or
 10 beneficiaries--not--accompanied--by-statements-setting-forth
 11 the-coverage-under-which-the-payments-are-being-made;
 12 {11}{k}--make-known-to-insureds-or-claimants-a-policy-of
 13 appealing-from-arbitration-awards-in-favor--of--insureds--or
 14 claimants--for--the--purpose--of--compelling--them-to-accept
 15 settlements-or-compromises-less-than-the-amount--awarded--in
 16 arbitration;
 17 {12}{l}--delay---the--investigation--or--payment--of
 18 claims-by-requiring-an-insured, claimant,--or--physician--of
 19 either--to--submit--a--preliminary--claim--report--and--then
 20 requiring-the-subsequent-submission-of-formal-proof-of--loss
 21 forms,--both--of-which-submissions-contain-substantially-the
 22 same-information;
 23 {13}{m}--fail-to-promptly-settle-claims,--if--liability
 24 has--become--reasonably--clear,--under--one--portion--of-the
 25 insurance-policy-coverage-in-order-to-influence--settlements

1 under-other-portions-of-the-insurance-policy-coverage;--or
 2 {14}{n}{14}--fail--to--promptly--provide--a--reasonable
 3 explanation-of-the-basis-in-the-insurance-policy-in-relation
 4 to-the-facts-or-applicable-law-for-denial-of-a-claim-or--for
 5 the-offer-of-a-compromise-settlement;
 6 {2}--As--used--in-this-section,--liability-is-reasonably
 7 clear-when-there-is-no-genuine-issue-as-to-any-material-fact
 8 regarding-liability-and-the-claiming-party--is-entitled--to
 9 judgment-as-a-matter-of-law;"

10 Section 2. REPEALER. Section 33-18-241, MCA, is
 11 amended-to-read: REPEALED.

12 "33-18-241.--Separation-of-trial-of-claim-for--lack--of
 13 good--faith unfair-claim-settlement-practices from-trial-of
 14 underlying-claim ---suspension-of-proceedings- {1} The-trial
 15 of-a-claim-or-action-against-an-insurer under--{section--4}
 16 for--lack--of-good-faith-in-its-handling-or-settlement-of-an
 17 insurance-claim unfair-claim-settlement-practices may-not-be
 18 consolidated-with-a-trial-of-the-underlying-claim-if:

19 {1}{a}--the-lack-of-good--faith insurance--settlement
 20 claim--is--against--a-party-different-from-the-party-against
 21 whom-the-underlying-claim-is-made;--and

22 {2}{b}--the---parties---have---not---stipulated---to
 23 consolidation--of--the--trial--of--the--lack--of--good-faith
 24 insurance-settlement claim-and-the-underlying-claim--

25 {2}--In-the-case-of-an-insurance-settlement-claim--that

1 ~~is--subject--to--the--provisions--of--subsection--(1),--all~~
 2 ~~proceedings--in--the--case--must--be--suspended--until--the~~
 3 ~~liability--issues--of--the--underlying--claim--have--been~~
 4 ~~determined--either--by--settlement--or--by--judgment--in--favor--of~~
 5 ~~the--plaintiff."~~

6 NEW SECTION. Section 3. Independent cause of action
 7 -- burden of proof. (1) An insured or a third-party claimant
 8 has an independent cause of action against an insurer for
 9 actual damages caused by the insurer's violation of
 10 subsection (1)(a), (1)(d), (1)(f), or (1)(m) (1), (4), (5),
 11 (6), (9), OR (13) of 33-18-201.

12 (2) In an action under this section, a plaintiff is
 13 not required to prove that the violations were of such
 14 frequency as to indicate a general business practice.

15 (3) An insured who has suffered damages as a result of
 16 the handling of an insurance claim may bring an action
 17 against the insurer for breach of the insurance contract,
 18 for fraud, or pursuant to this section, but not under any
 19 other theory or cause of action. An insured may not bring an
 20 action for bad faith in connection with the handling of an
 21 insurance claim.

22 (4) In an action under this section, the court or jury
 23 may award such damages as were proximately caused by the
 24 violation of subsection (1)(a), (1)(d), (1)(f), or (1)(m)
 25 (1), (4), (5), (6), (9), OR (13) of 33-18-201. EXEMPLARY

1 DAMAGES MAY ALSO BE ASSESSED IN ACCORDANCE WITH 27-1-221.

2 (5) In--order--to--recover--under--this--section,--a
 3 plaintiff--must--prove--the--absence--of--any--debatable--reason--for
 4 the--insurer's--refusal--to--pay--or--refusal--to--pay--the--amount
 5 demand--by--the--plaintiff. A--debatable--reason--is--an--arguable
 6 reason--that--is--open--to--dispute--or--question. AN INSURER MAY
 7 NOT BE HELD LIABLE UNDER THIS SECTION IF THE INSURER HAD A
 8 REASONABLE BASIS IN LAW OR IN FACT FOR CONTESTING THE CLAIM
 9 OR THE AMOUNT OF THE CLAIM, WHICHEVER IS IN ISSUE.

10 (6) (A) AN INSURED MAY FILE AN ACTION UNDER THIS
 11 SECTION, TOGETHER WITH ANY OTHER CAUSE OF ACTION THE INSURED
 12 HAS AGAINST THE INSURER. ACTIONS MAY BE BIFURCATED FOR TRIAL
 13 WHERE JUSTICE SO REQUIRES.

14 (B) A THIRD-PARTY CLAIMANT MAY NOT FILE AN ACTION
 15 UNDER THIS SECTION UNTIL AFTER THE UNDERLYING CLAIM HAS BEEN
 16 SETTLED OR A JUDGMENT ENTERED IN FAVOR OF THE CLAIMANT ON
 17 THE UNDERLYING CLAIM.

18 (7) THE PERIOD PRESCRIBED FOR COMMENCEMENT OF AN
 19 ACTION UNDER THIS SECTION IS:

20 (A) FOR AN INSURED, WITHIN 2 YEARS FROM THE DATE OF
 21 THE VIOLATION OF 33-18-201; AND

22 (B) FOR A THIRD-PARTY CLAIMANT, WITHIN 1 YEAR FROM THE
 23 DATE OF THE SETTLEMENT OF OR THE ENTRY OF JUDGMENT ON THE
 24 UNDERLYING CLAIM.

25 (8) AS USED IN THIS SECTION, AN INSURER INCLUDES A

1 PERSON, FIRM, OR CORPORATION UTILIZING SELF-INSURANCE TO PAY
2 CLAIMS MADE AGAINST THEM.

3 NEW SECTION. Section 4. Codification instruction.
4 Section 4 3 is intended to be codified as an integral part
5 of Title 33, chapter 18, part 2, and the provisions of Title
6 33, chapter 18, part 2, apply to section 4 3.

7 NEW SECTION. Section 5. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 6. Applicability. This act
14 applies to causes of action arising after the effective date
15 of this act.

16 NEW SECTION. Section 7. Effective date. This act is
17 effective on ~~passage-and-approval~~ JULY 1, 1987.

-End-